

IN THE IOWA DISTRICT COURT IN AND FOR POTTAWATTAMIE COUNTY

COUNCIL BLUFFS COMMUNITY)
SCHOOL DISTRICT,)
)
Plaintiff/Petitioner,) CASE NO. 04781 CVCV086308
)
vs.)
)
PUBLIC EMPLOYMENT RELATIONS) ORDER
BOARD,)
)
Defendant/Respondent,)
)
And)
)
COMMUNICATIONS WORKERS)
OF AMERICAN, LOCAL 7103,)
)
Intervenor.)

FILED
04 MAY 28 PM 11:36
IOWA DISTRICT COURT
POTTAWATTAMIE COUNTY

STATEMENT OF THE CASE

This matter comes before the Court pursuant to a Petition for Judicial Review filed by the Petitioner, the Council Bluffs Community School District, on October 21, 2003, pursuant to Iowa Code Section 17A.19. Oral argument was held on April 16, 2004. The Plaintiff/Petitioner, Council Bluffs Community School District was represented by Attorney Brian L. Gruhn, the Defendant/Respondent, Public Employment Relations Board was represented by Attorney Jan Berry (via teleconference), and the Intervenor, Communications Workers of America, Local 7103, was represented by Attorney Stanley Gosch.

In its petition on Appeal, the Council Bluffs Community School District (hereinafter District) requested that the Court reverse a Decision issued by the Public Employment Relations Board (hereinafter PERB) on September 24, 2003. In its decision, PERB included the job classifications of

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high school secretary, secretary of elementary education, secretary of nutrition services, secretary of student services, and secretary of special education, in a bargaining unit represented by the Intervenor, the Communication Workers of America, Local 7103 (hereinafter CWA). The District's Petition for Judicial Review requests that the Court reverse PERB's decision and exclude these positions from the bargaining unit represented by CWA.

On July 19, 2002, CWA filed a Petition for Amendment of Bargaining Unit seeking to include, into the bargaining unit, the Building and Grounds Secretary, Secretary of Elementary Education, Secretary for Director of Elementary Education, Secretary of Community Services & Adult Education, Secretary for Human Resources, Print Shop Clerk, Payroll Clerk, Secretary of Food Services, High School Secretaries, and the District Bookkeeper (Case No. 6514). In addition, on July 19, 2002, the CWA filed a Petition for Clarification of Bargaining Unit seeking clarification of the description of the bargaining unit to include the positions of Payroll Clerk, Secretary of Elementary Ed, and Secretary for Human Resources (Case No. 6516). On September 6, 2002, the District filed a Petition for Amendment of the Bargaining Unit (Case No. 6536) seeking to exclude from the bargaining unit the positions of secretary of student services and secretary of special education which were part of the existing unit.

Prior to a hearing before PERB, the District and the CWA reached an agreement concerning certain of the positions in dispute. The parties agreed that the position of Executive Secretary of Personnel (a.k.a. Secretary of Human Resources) would be excluded from the bargaining unit and would be withdrawn from the CWA's Petition for Amendment of Bargaining Unit and Petition for Clarification and that the position of Print Shop Clerk would be included in the bargaining unit and would be withdrawn from the CWA's petition. This stipulation resulted in the following positions still in dispute: Building and Grounds Secretary, Secretary of Elementary Education, Secretary for

the Director of Elementary Education, Secretary of Community Services & Adult Education, Payroll Clerk, Secretary of Food Services, High School Secretaries, District Bookkeeper, Secretary of Student Services and Secretary of Special Education.

The cases were consolidated and a hearing was held on December 18 and 19, 2002, before the Iowa Public Employment Relations Board. On September 24, 2003, PERB issued the following order concerning the three cases before it:

Case No. 6516: In this petition for clarification, CWA asked whether the classifications “payroll specialist” (formerly called “payroll clerk”) and “secretary, elementary education” are included in the unit as presently described. The payroll specialist classification is not presently clearly included in the unit, and falls within the general exclusion of “all other persons excluded by the Act.” The “secretary, elementary education” is specifically excluded from the present unit description. (Although we find below, in Case No. 6514, that the unit should be amended to include this classification.)

Case No. 6514: As requested by CWA in this petition for amendment of bargaining unit, the unit shall be amended to include the classifications “print shop clerk,” “secretary, elementary education,” “high school secretary,” and “secretary, nutrition services.” The unit shall not be amended to include the classifications “payroll specialist,” “secretary, personnel/certified,” “secretary, personnel/classified” or “secretary, facilities and maintenance,” and the unit description shall be amended to specifically exclude these classifications.

Case No. 6535: The unit shall not be amended to exclude the “secretary of student services” and “secretary of special education,” but shall be amended to specifically include these classifications.

FINDINGS OF FACT

The Petitioner, the Council Bluffs Community School District, is a public school corporation responsible for providing education to citizens of the City of Council Bluffs, Iowa and the surrounding area of Pottawattamie County, Iowa. The District is a public employer as defined in Section 20.3(11) of the Iowa Code.

The Respondent, the Public Employment Relations Board, is the agency established by Chapter 20 of the Iowa Code and is charged with administering the Public Employment Relations Act, including certifying and determining appropriate bargaining units, pursuant to Chapter 20 of the Iowa Code.

The Intervenor, Communications Workers of America, Local 7103, is the union that represents the District's teacher associates, secretaries, clerk/typists, library associates, clerks and bookkeepers. The union is an employee organization as defined in Section 20.3(4) of the Iowa Code.

The five job classifications that are the subject of the District's Petition for Judicial Review are: high school secretary, secretary of elementary education, secretary of nutrition services, secretary of student services, and secretary of special education.

The District claims that all of the five job classifications at issue (High School Secretary, Secretary of Elementary Education, Secretary of Nutrition Services, Secretary of Student Services and Secretary of Special Education) are properly excluded from the CWA-represented bargaining unit because they are "confidential employees" within the meaning of Iowa Code Section 20.3(3) or are "representatives of a public employer" (either "supervisory employees" or so-called "managerial employees") within the meaning of Iowa Code Section 20.4(2).

The Court has reviewed the PERB's decision, and it reveals that the Board fully considered each of the claims the District asserted before the agency. The agency found that the positions were not of a confidential, supervisory or managerial status. This finding is supported by substantial evidence in the record.

CONCLUSIONS OF LAW

Courts review an agency decision for correction of errors of law. PanDa Eng'g v. Eng'g & Land Surveying Examining Bd., 621 N.W.2d 196, 198 (Iowa 2001). “Administrative decisions are to be made by the agencies, and not by the courts.” Leonard v. Iowa State Bd. Of Educ., N.W.2d 815, 815 (Iowa 1991). “The Iowa Public Employment Relations Act is written in broad language so as to allow a large number of public employees to be eligible for coverage under the Act.” Iowa Ass'n of School Boards v. Iowa Public Employment Relations Bd., 400 N.W.2d 571, 586 (Iowa 1987), citing Iowa Code Section 20.1, 20.1(3). “We will read the exclusions under Section 20.4 narrowly to promote the Act’s broad application.” Id. An agency’s factual findings are binding on appeal if supported by “substantial evidence in the record made before the agency when the record is viewed as a whole.” Ludtke v. Iowa Dep't of Transp., 646 N.W.2d 62, 65 (Iowa 2002). Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. Id. Conversely, evidence is not insubstantial merely because it would have supported contrary inferences, or because two inconsistent conclusions could be drawn from it. Id.

The District has failed to demonstrate the required prejudice and invalidity of agency action by PERB, as required by Iowa Code Section 17A.19(8)(a).

The District has failed to demonstrate that PERB’s decision is “unsupported by substantial evidence in the record” or “affected by other error of law,” or that it suffers from any of the Iowa Code Section 17A.19(10) defects alleged in its petition, and further:

a. The District failed to demonstrate that PERB unlawfully failed to exclude from the bargaining unit the job classification of secretary of elementary education as a confidential employee under Iowa Code Section 20.3(3).

b. The District failed to demonstrate that PERB unlawfully failed to exclude from the bargaining unit the job classification of secretary of elementary education as a supervisor or as a representative of the School District filling a position analogous to first assistant under Iowa Code Section 20.4(2).

c. The District failed to demonstrate that PERB unlawfully failed to exclude from the bargaining unit the job classification of high school secretary as a confidential employee under Iowa Code Section 20.3(3).

d. The District failed to demonstrate that PERB unlawfully failed to exclude from the bargaining unit the job classification of high school secretary as a supervisor or representative of the School District filling a position analogous to first assistant under Iowa Code Section 20.4(2).

e. The District failed to demonstrate that PERB unlawfully failed to exclude from the bargaining unit the job classification of secretary of nutrition services as a confidential employee under Iowa Code Section 20.3(3).

f. The District failed to demonstrate that PERB unlawfully failed to exclude from the bargaining unit the job classification of secretary of nutrition services as a supervisor or as a representative of the School District filling a position analogous to first assistant under Iowa Code Section 20.4(2).

g. The District failed to demonstrate that PERB unlawfully failed to exclude from the bargaining unit the job classification of secretary of student services from the bargaining unit or

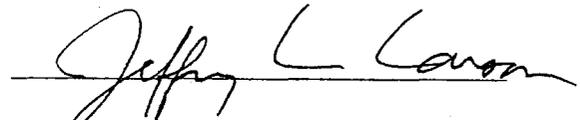
that it unlawfully amended the bargaining unit to include it. The District failed to establish that the secretary of student services was a supervisor, manager or confidential employee.

h. The District failed to demonstrate that PERB unlawfully failed to exclude from the bargaining unit the job classification of secretary of special education from the bargaining unit or that it unlawfully amended the bargaining unit to include it. The District failed to establish that the secretary of special education was a supervisor, manager or confidential employee.

Based on the foregoing, PERB Case No. 6514 and Case No. 6525 are affirmed.

Costs are taxed to the District.

DATED: May 28, 2004


Jeffrey L. Larson, Judge